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9 D'PARIS CHARLES WILLIAMS

10 **UNITED STATES DISTRICT COURT**  
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

12  
13 D'PARIS CHARLES WILLIAMS, an  
individual,  
14

15 Plaintiff,

16 v.  
17 CITY OF SAN FRANCISCO, a municipal  
corporation; GREGORY SKAUG,  
individually and in his capacity as an officer  
for the SAN FRANCISCO Police  
Department; MILEN BANEGRAS, individually  
and in his capacity as an officer for the SAN  
FRANCISCO Police Department;  
THEODORE POLOVINA, individually and  
in his capacity as an officer for the SAN  
FRANCISCO Police Department; DOES, 1-  
25, inclusive, individually and in their  
capacities as officers for the SAN  
FRANCISCO Police Department,  
25

26 Defendants.

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28 ///

Case No:

**PLAINTIFF'S COMPLAINT FOR  
DAMAGES**

**[JURY TRIAL DEMANDED]**

## INTRODUCTION

1. This is an action for damages brought pursuant to Title 42 U.S.C §§ 1983 and 1988, and the Fourth and Fourteenth Amendments to the United States Constitution, under California Civil Code § 52.1 and § 51.7, and under the common law of California. This action is against the CITY OF SAN FRANCISCO, GREGORY SKAUG, MILEN BANEGAS, and THEODORE POLOVINA of the SAN FRANCISCO Police Department, and DOES 1-25.

2. It is also alleged that these violations and torts were committed due to the actions of the above mentioned officers of the SAN FRANCISCO Police Department.

## **VENUE AND JURISDICTION**

3. The unlawful acts and practices alleged herein occurred at or near the CITY OF SAN FRANCISCO, California, within the jurisdictional boundaries of this court. The damages sought are within the jurisdictional limits of this court.

## PARTIES

4. At all times mentioned herein, D'PARIS CHARLES WILLIAMS (hereinafter "Plaintiff") was and is a resident of the state of California, and a United States Citizen.

5. Defendant City of SAN FRANCISCO (hereinafter "CITY") is and at all times herein mentioned a municipal entity duly organized and existing under the laws of the State of California. Under its authority, the CITY operates the CITY Police Department.

6. At all times mentioned herein, Defendant GREGORY SKAUG (hereinafter "SKAUG") is and at all times herein mentioned an officer of the CITY Police Department.

7. At all times mentioned herein, Defendant MILEN BANEGAS (hereinafter "BANEGAS") is and at all times herein mentioned an officer of the CITY Police Department.

8. At all times mentioned herein, Defendant THEODORE POLOVINA (hereinafter "POLOVINA") is and at all times herein mentioned an officer of the CITY Police Department.

9. Plaintiff is ignorant of the true names and/or capacities of defendants sued herein as DOES 1 through 25, inclusive, and therefore sue said Defendants by such fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff believes and alleges that each of the DOE defendants is legally responsible and liable for the incident, injuries and damages hereinafter set forth. Each defendant proximately caused injuries and damages because of their negligence, breach of duty, negligent supervision, management or control, violation of public policy, and false arrests. Each defendant is liable for his/her personal conduct, vicarious or imputed negligence, fault, or breach of duty, whether severally or jointly, or whether based upon agency, employment, ownership, entrustment, custody, care or control or upon any other act or omission. Plaintiff will ask leave to amend this complaint subject to further discovery.

10. In doing the acts alleged herein, Defendants, and each of them acted within the course and scope of their employment.

11. In doing the acts and/or omissions alleged herein, Defendants, and each of them, acted under color of authority and/or under color of law. Due to the acts and/or omissions alleged herein, Defendants, and each of them, acted as the agent, servant, and employee and/or in concert with each of said other Defendants herein.

12. For State causes of action related to Federal claims, Plaintiff is required to comply with an administrative claim requirement under California law. Plaintiff has complied with all applicable requirements.

### **FACTUAL ALLEGATIONS**

13. On November 15, 2013, at approximately 3:30 p.m., Plaintiff was returning home from the Make-A-Wish Foundation ‘Batkid’ event, in Downtown San Francisco. Plaintiff’s home is located at 44 Maxwell Court, in San Francisco, California.

14. Immediately after Plaintiff began to walk into his house, he heard someone say ‘come here.’ After Plaintiff went in the front door and greeted his nephew, he turned to respond to the voice he had just heard. The Defendant plainclothes police officers, KRAUG, BANEGRAS, and POLOVINA never identified themselves as police officers and were not

1 wearing uniforms or insignia to identify themselves as such. However, Defendant KRAUG  
2 told Plaintiff that he needed to come outside of the house because he rode his bicycle on the  
3 sidewalk. At this time Plaintiff recognized the Defendants as plainclothed CITY police  
4 officers, because of the dialogue and the noticeable bullet proof vests Defendants were  
5 wearing under their clothing. Plaintiff apologized for riding his bicycle on the sidewalk, but  
6 the Defendant officers insisted that Plaintiff come outside of his house.

7 15. Plaintiff told the Defendant officers that they had no right to ask him to come  
8 outside of his house, but Defendant officers inexplicably reached into the house, Plaintiff and  
9 pulled him outside of the house. Plaintiff held onto the doorframe and continued to tell the  
10 Defendant officers that their actions were illegal. At all times herein mentioned, Plaintiff  
11 was unarmed and posed no threat to the officers or the public.

12 16. For no legally justified reason, the Defendant officers threw Plaintiff onto the  
13 ground, face down. The Defendant officers punched Plaintiff in the ribcage and he began to  
14 yell out in pain. The Defendant officers punched Plaintiff in the face and in the back of his  
15 neck over five times, causing him to black out for a few seconds. When Plaintiff gained  
16 consciousness, the Defendant officers were choking him.

17 17. Thereafter, the Defendant officers handcuffed Plaintiff and transported him to the  
18 Valencia Police Station. Hours later, Plaintiff was taken to San Francisco General Hospital,  
19 where he remained handcuffed for over three hours. Plaintiff's hands became numb and stiff  
20 due to the pressure from the handcuffs. Plaintiff overheard officers laugh at him as he lay in  
21 pain, in the hospital bed.

22 18. Plaintiff was then transported to jail and booked for resisting arrest, resisting  
23 executive officer, assault with force, and riding bike on sidewalk. Plaintiff spent threee days  
24 in jail. However, Plaintiff's charges were dropped pending investigation. Plaintiff suffered  
25 from severe injuries to his face and was unable to eat for three days due to the pain and  
26 swelling of his face. This egregious and excessive use of force was witnessed by and  
27 captured on video by numerous people.

19. Plaintiff is informed, believes and therein alleges that CITY knew, had reason to know by way of actual or constructive notice of the aforementioned policy, culture, pattern and/or practice and the complained of conduct and resultant injuries/violations.

## DAMAGES

20. As a proximate result of Defendants' conduct, Plaintiff suffered substantial physical injuries from the officers' wrongful arrest and detention and use of excessive force. As a further proximate result of Defendants' conduct, Plaintiff incurred damages caused by the assault, and battery by Defendant officers and DOES 1-25. Plaintiff suffered severe and extreme emotional distress, fear, terror, anxiety, humiliation, and loss of sense of security, dignity, and pride as a United States Citizen.

21. The conduct of defendants was malicious, wanton, and oppressive. Plaintiff is therefore entitled to and aware of punitive damages against said defendants.

## **CAUSES OF ACTION**

## FIRST CAUSE OF ACTION

## Violation of Fourth Amendment of the United States Constitution

(42 U.S.C. §1983)

(Against KRAUG, BANEGAS, POLOVINA, and DOES 1 to 10)

22. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 21 of this Complaint.

23. Defendants' above-described conduct, wherein it is alleged that officers' detained Plaintiff far beyond the scope necessary and acceptable under law and without reasonable suspicion, violated decedent's right as provided for under the Fourth Amendment to the United States Constitution to be free from unlawful seizure (detention).

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

## **SECOND CAUSE OF ACTION**

## Violation of Fourth Amendment of the United States Constitution

1 (42 U.S.C. §1983)  
2  
3 (Against KRAUG, BANEGAS, POLOVINA, and DOES 1 to 10)

4 24. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 23 of this  
5 Complaint.

6 25. Defendants' above-described conduct, wherein it is alleged that officers arrested  
7 Plaintiff without probable cause violating his rights as provided for under the Fourth  
8 Amendment to the United States Constitution to be free from unlawful seizure (arrest).

9 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.  
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### THIRD CAUSE OF ACTION

12 Violation of Fourth Amendment of the United States Constitution  
13  
14 (42 U.S.C. §1983)

15 13 (Against KRAUG, BANEGAS, POLOVINA, and DOES 1 to 10)

16 14 26. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 25 of this  
17 Complaint.

18 16 27. Defendants' above-described conduct violated Plaintiff's right as provided for  
19 under the Fourth Amendment to the United States Constitution to be free from excessive  
20 force and/or the arbitrary and/or unreasonable use of deadly force against him.  
21  
22

23 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.  
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### FOURTH CAUSE OF ACTION

26 (Violation of Fourth Amendment of the United States Constitution)  
27  
28 (Monell – 42 U.S.C. section 1983)

29 (Against CITY OF SAN FRANCISCO, and DOES 11 to 25)

30 28. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 27 of this  
31 Complaint.

32 29. Plaintiff is informed and believes and thereon alleges that high-ranking CITY OF  
33 SAN FRANCISCO officials, including high-ranking police supervisors such as DOES 11  
34

1 through 25, and/or each of them, knew and/or reasonably should have known about repeated  
 2 acts of misconduct by Defendant officers KRAUG, BANEGAS, POLOVINA and DOES 1-  
 3 10, and/or each of them.

4 30. Despite having such notice, Plaintiff is informed and believes and thereon alleges  
 5 that Defendant DOES 11-50, and/or each of them, approved, ratified, condoned, encouraged,  
 6 sought to cover up, and/or tacitly authorized the continuing pattern and practice of  
 7 misconduct and/or civil rights violations by said police officers.

8 31. Plaintiff is further informed and believes and thereon alleges that as a result of the  
 9 deliberate indifference, reckless and/or conscious disregard of the misconduct by Defendant  
 10 officers KRAUG, BANEGAS, POLOVINA and DOES 1-10 and/or each of them,  
 11 encouraged these officers to continue their course of misconduct and caused these officers'  
 12 lack of training, resulting in the violation of the Plaintiff's rights as alleged herein.

13 32. Plaintiff further alleges that Defendant DOES 11-25, and/or each of them, were  
 14 on notice of the Constitutional defects in their training of CITY OF SAN FRANCISCO  
 15 police officers, including, but not limited to unlawful arrests and detentions not based on  
 16 probable cause.

17 33. The aforementioned acts and/or omissions and/or deliberate indifference by high  
 18 ranking CITY OF SAN FRANCISCO officials, including high ranking CITY OF SAN  
 19 FRANCISCO Police Department supervisors, Defendant DOES 11-50, and each of them  
 20 resulted in the deprivation of Plaintiff's constitutional rights including, but not limited to the  
 21 right to be free from unreasonable searches and seizures, as guaranteed by the Fourth  
 22 Amendment to the United States Constitution, the right to not be deprived of life, liberty or  
 23 property without due process of the law, as guaranteed by the Fourteenth Amendment to the  
 24 United States Constitution and the right to be free from excessive force by police officers, as  
 25 guaranteed by the Fourth Amendment to the United States Constitution.

26 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.  
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1                   FIFTH CAUSE OF ACTION

2                   (Intentional Infliction of Emotional Distress)

3                   (Against KRAUG, BANEGAS, POLOVINA, and DOES 1 to 10)

4       34. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 33 of this  
5       Complaint.

6       35. Defendants' above-described conduct was extreme, unreasonable and outrageous.

7       36. In engaging in the above-described conduct, defendant intentionally ignored or  
8       recklessly disregarded the foreseeable risk that Plaintiff would suffer extreme emotional  
9       distress as a result of defendants conduct.

10      WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

12                   SIXTH CAUSE OF ACTION

13                   (Violation of Plaintiff's Right To Enjoy Civil Rights)

14                   (Violation of CALIFORNIA CIVIL CODE §52.1)

15                   (Against KRAUG, BANEGAS, POLOVINA, and DOES 1 to 10)

16       37. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 36 of this  
17       Complaint.

18       38. Defendants' above-described conduct constituted interference, and attempted  
19       interference, by threats, intimidation and coercion, with Plaintiff's peaceable exercise and  
20       enjoyment of rights secured by the Constitution and laws of the United States and the State of  
21       California, in violation of California Civil Code §52.1.

22      WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

24                   SEVENTH CAUSE OF ACTION

25                   (Violation of State Statutory Rights)

26                   (Violation of California Civil Code §51.7)

27                   (Against KRAUG, BANEGAS, POLOVINA, and DOES 1 to 10)

39. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 32 of the Complaint.

40. Plaintiff is informed and believes and thereon alleges that the conduct of Defendants KRAUG, BANEGAS, POLOVINA and DOES 1-10, inclusive, as described herein, was motivated by racial prejudice against Plaintiff. Plaintiff is and was readily recognizable as African-American. In addition, one or more of the Defendants used race as a criteria for determining that it was necessary to detain, harass, and beat Plaintiff while he entered his home. Defendants violated Plaintiff's rights under California Civil Code §51.7 to be free from violence, or intimidation by threat of violence committed against him because of his race.

41. Under the provisions of California Civil Code §52(b), Defendants are liable for punitive damages for each violation of Civil Code §51.7, reasonable attorney's fees and an additional \$25,000.00.

42. As a proximate result of Defendants' wrongful conduct, plaintiff suffered damages as hereinafter set forth.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

## EIGHTH CAUSE OF ACTION

### (Assault And Battery)

(Against KRAUG, BANEGAS, POLOVINA, and DOES 1 to 10)

43. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 42 of this Complaint.

44. Defendants' above-described conduct constituted assault and battery.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

## NINTH CAUSE OF ACTION

(Negligence)

(Against KRAUG, BANEGAS, POLOVINA, and DOES 1 to 10)

45. Plaintiff re-alleges and incorporates by reference herein paragraphs 1 through 44 of this Complaint, except for any and all allegations of intentional, malicious, extreme, outrageous, wanton, and oppressive conduct by defendants, and any and all allegations requesting punitive damages.

46. The present action is brought pursuant to section 820 and 815.2 of the California Government Code. Pursuant to section 820 of the California Government Code, as public employees, DOES 1 to 25 are liable for injuries caused by their acts or omissions to the same extent as a private person. At all times mentioned herein, KRAUG, BANEGAS, POLOVINA, and Defendant DOES 1 to 25 were acting within the course and scope of their employment and/or agency with Defendants CITY. As such Defendants CITY are liable in *respondeat superior* for the injuries caused by the acts and omissions of KRAUG, BANEGAS, POLOVINA, and DOES 1 to 25 pursuant to section 815.2 of the California Government Code.

47. CITY, KRAUG, BANEGAS, POLOVINA, and DOES 1 to 25 negligently and without due care, and without cause or provocation struck Plaintiff. The striking of Plaintiff was unjustified as there were no facts or circumstances which warranted the use of any force at the time.

48. The striking of Plaintiff occurred as a result of the absence of due care for the safety of others and constituted an unreasonable, unwarranted, and excessive use of force and manifested an unreasonable risk of injury to Plaintiff.

## **DEMAND FOR PUNITIVE DAMAGES**

49. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully alleged here.

50. Defendants' above-described statements and actions were at all times engaged in with malice, oppression or fraud, particularly when they struck D'PARIS CHARLES WILLIAMS with the intention of causing injury to him or with reckless disregard for the possibility that they would injure him.

51. Defendants' intentional or reckless use of force of a defenseless citizen who was cooperating with officers was despicable and warrants punitive damages.

## **PRAAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment as follows:

1. For general damages, according to proof;
  2. For special damages, according to proof;
  3. For punitive damages, according to proof;
  4. For violation of California Civil Code Sections 52.1, statutory damages, and reasonable attorney's fees;
  5. For violation of California Civil Code Section 52(b), punitive damages against Defendant agents and/or officers, \$25,000.00 for each offense and reasonable attorney's fees;
  6. For statutory damages, according to proof;
  7. For reasonable attorney's fees pursuant to 42 U.S.C. Section 1988;
  8. For cost of suit herein incurred; and
  9. For such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: December 23, 2014

## **THE LAW OFFICES OF JOHN L. BURRIS**

/s/ DeWitt M. Lacy  
DeWitt M. Lacy  
Attorney(s) for Plaintiffs